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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 49

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

GODFREY HAMMEL AND PEARL HAMMEL

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 10, 1940

CERTIORARI GRANTED MAY 20, 1940

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Dec. 30—Memorandum opinion rendered, Ernest H. Van Fossan, Div. 9. Judgment will be entered for the petitioner.
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1938

Mar. 24—Petition for review by U. S. Circuit Court of Appeals (6) with assignments of error filed by General Counsel.
Apr. 4—Proof of service filed by General Counsel. (2) Attorney and taxpayer.
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Before United States Board of Tax Appeals

Petition

Filed August 10, 1936

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:AR:D-1 LB-90D dated May 13, 1936, and as a basis for this proceeding allege as follows:

(1) The petitioners are individuals, husband and wife, living together and filed a joint income-tax return for the calendar year 1934. The address is 1248 Free Press Building, Detroit, Michigan.

(2) The notice of deficiency, a copy of which is hereto attached marked Exhibit A, was mailed to the petitioners on May 13, 1936.

(3) The taxes in controversy are income taxes for the calendar year 1934 and amount to $426.79.

ERRORS

The determination of the tax set forth in the said notice of deficiency is based upon the following errors.

(4) The Commissioner errs when he contends that only $2,000.00 is allowable as a deduction of the loss of $4,998.03 claimed because of one of the petitioners (Pearl Hammel) loss of her investment in a land syndicate thru foreclosure.

(4a) The Commissioner errs when he contends that a loss arising out of a sheriff's foreclosure sale is a capital loss from "sale or exchange" within the intent and meaning of Sec. 117 of the Revenue Act of 1934 and therefore is subject to the limitations on losses under Sec. 117-D.

FACTS

The facts upon which the petitioners rely as a basis for this proceeding are as follows:

(5) Mrs. Pearl Hammel, one of the petitioners, made a speculative investment of $4,998.03 (this is the amount of actual cash invested) in a land syndicate, which syndicate was purchasing a piece of acreage (about 80 acres) on land contract for the prime purpose of selling same at an advance price over cost. At the time of foreclosure there was due and owing the vendor on this property an unpaid balance of around $80,000.00 plus accrued interest and
4 accrued and unpaid State and County Taxes totaling about $15,000.00 making the total unpaid balance approximately $95,000.00.

(6) Foreclosure proceedings were started in Oakland County Circuit Court and a deficiency judgment was granted against the petitioner, Mrs. Pearl Hammel, in the amount of $89,000.00. Around the 1st of April 1934 the Oakland County Sheriff made the "sheriff sale" and dispossessed the petitioner, Pearl Hammel, of any and all of her right, title and/or interest in this property.

(7) Petitioner, Pearl Hammel, was insolvent and in order to wipe out the deficiency judgment of $89,000.00 against her she filed a petition in bankruptcy in the District Court of the United States, Eastern District of Michigan on the 26th day of April 1934, No. 17315, and was duly adjudged bankrupt.

PRAYER

The petitioners pray for relief from the deficiency asserted by the respondent and rely upon the following particulars.

(8) The total loss of her investment of $4,998.03 was due to the fact that she was dispossessed of her interest in this property by due process of law and should be allowed as a deduction in full for a worthless investment under Sec. 23 Revenue Act of 1934, and Art. 23, E–1 (b), E–4, and K–4, Reg. 86. That she was not a party to a sale or exchange transaction, therefore, the loss is not limited to the provisions of Sec. 117 (d).

Petitioners pray that the Board may hear and redetermine the deficiency herein alleged.

Petitioners pray that the Board may advance this case and have it immediately placed upon its circuit calendar to be heard when the Board next convenes in Detroit, Michigan, because of the fact that petitioners would be put to considerable expense in coming to Washington, D. C.

GODFREY HAMMEL,
PEARL HAMMEL,
Petitioners,
1248 Free Press Building, Detroit, Michigan.

5 [Duly sworn to by Godfrey Hammel and Pearl Hammel; jurats omitted in printing]

6 *Exhibit A to petition*

TREASURY DEPARTMENT,
Washington, May 13, 1936.

Mr. GODFREY HAMMEL and
Mrs. PEARL HAMMEL (Husband and Wife),
1248 Free Press Building, Detroit, Michigan.

SIR and MADAM: You are advised that the determination of your income tax liability for the taxable year(s) 1934 discloses a deficiency of $426.79 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully.

GUY T. HELVERING,
Commissioner.

By (Signed) CHAS T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

7 STATEMENT

IT:AR:D-1.
LB-90D.

In re: Mr. Godfrey Hammel and Mrs. Pearl Hammel (Husband and Wife), 1248 Free Press Building, Detroit, Michigan

INCOME TAX LIABILITY

Year, 1934; income tax liability, $1,555.44; income tax assessed, $1,128.65; deficiency, $426.79.

The deficiency shown herein is based upon the report dated January 18, 1936, prepared by Revenue Agent M. W. Fisher, a copy of which was transmitted to you.

Careful consideration has been accorded your protests dated February 29, 1936, and April 22, 1936, in connection with the findings of the examining officer.

Only $2,000.00 of the loss of $4,998.03 claimed on sale of farm by the sheriff due to the foreclosure of the mortgage is allowable as a deduction since it is held that the loss is a capital net loss from the sale of property. General Counsel's Memorandum 12737, Cumulative Bulletin XIII–1, page 120, appears to be applicable in this case.

Net income reported on return		$19,354.35
Add: Portion of loss claimed, disallowed		2,998.03
Corrected Net income		$22,352.38
Less: Personal exemption and credit for dependents		4,500.00
Net income subject to surtax		$17,852.38
Less:		
Dividends	$2,552.50	
Earned Income credit	1,007.87	3,560.37
Net income subject to normal tax		$14,292.01
Normal tax at 4% on $14,292.01		$571.68
Surtax on $17,852.38		983.76
Corrected income tax liability		$1,555.44
Income tax assessed, original, account No. 214056		1,128.65
Deficiency		$426.79

8 Before United States Board of Tax Appeals

Answer to motion of respondent and amendment to paragraph No. 7 of petitioners' statement of facts

Filed September 28, 1936

Petitioners make the following answer to Respondent's "Motion" filed September 15, 1936.

That one of the Petitioners, "Pearl Hammel," was adjudged bankrupt in the District Court of the United States, Eastern District of Michigan, on April 26, 1934, and she was duly discharged by this same Court on July 28, 1934.

Petitioners pray leave to amend Paragraph 7 of Petitioners' original statement of facts to read as follows:

"7—Petitioner, Pearl Hammel, was insolvent and in order to wipe out the deficiency judgment of $89,000.00 against her, she filed a petition in bankruptcy in the District Court of the United States, Eastern District of Michigan, on the 26th day of April, 1934, No. 17315, and was duly adjudged bankrupt." Further, on July 28, 1934, upon order of the District Court of the United States, Eastern District of Miehigan, she was duly discharged.

Petitioners respectfully pray that the Board will allow the amendment and deny the motion of Respondent.

Petitioners further state that no personal appearance will be made at the hearing of Respondent's motion.

GODFREY HAMMEL,
Petitioner.

PEARL HAMMEL,
Petitioner.

9 Before United States Board of Tax Appeals

Answer to petition and amendment to petition

Filed November 12, 1936

Comes now the Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and for answer to the petition filed by the above-named petitioners, admits and denies as follows, to wit:

1, 2. Admits the allegations contained in Paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1934. Denies the remaining allegations contained in Paragraph 3 of the petition.

4 and 4 (a). Denies that the Commissioner erred as alleged in Paragraphs 4 and 4 (a) of the petition.

5, 6. Denies the allegations contained in Paragraphs 5 and 6 of the petition.

7. Denies the allegations contained in Paragraph 7 as amended by amendment filed on September 28, 1936.

8. Denies the allegations contained in Paragraph 8 of the petition.

Denies generally and specifically each and every allegation set forth in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) HERMAN OLIPHANT,
General Counsel,
For the Department of the Treasury.

Of Counsel:
CHESTER A. GWINN,
HUGH R. DOWLING,
Special Attorneys,
Bureau of Internal Revenue.

10 Before United States Board of Tax Appeals

Memorandum opinion

Entered December 30, 1937

VAN FOSSAN: Respondent determined a deficiency of $426.79 in income tax of petitioner for the year 1934 consequent on his conclusion that a certain loss deducted by petitioner was a capital net loss and not an ordinary loss. The facts were stipulated substantially as follows:

During the years 1926 to 1930, both inclusive, the petitioner Pearl Hammel invested the sum of $4,998.03 in a speculative land syndicate, which syndicate purchased on land contract 80 acres of land in Oakland County, Michigan, known as "The Adams Farm," the purchase price being $96,000. The syndicate made a down payment of $20,000,

and thereafter approximately $4,000 additional was paid on the principal, leaving an unpaid balance of approximately $72,000, plus accrued interest and State and County taxes for several years.

One Charles L. Bruce acted as Trustee for the purchasers (the syndicate members).

Because of the general financial condition of the country, the value of the land, and other lands in Oakland County, Michigan. depreciated to the extent that the land referred to decreased in value to the value of farm land and was worth, in 1934, approximately $8,000.

The petitioner, Pearl Hammel, and other members of the syndicate, were unable to meet the payments called for by the contract and were in default, and the seller on the contract, Mrs. Julia Adams, commenced foreclosure proceedings in Chancery in the Oakland County Circuit Court and obtained a decree of foreclosure without any equity of redemption, which decree was affirmed by a decision of the Michigan Supreme Court and a decree entered thereon in the year 1934, pursuant to which decree the property was sold on March 26, 1934, by the sheriff and the sheriff's deed issued to Mrs. Julia Adams. Julia Adams, in the Supreme Court proceedings, obtained a deficiency judgment against all of the members of the syndicate, jointly and severally, in the amount of approximately $79,000. The petitioner, Pearl Hammel, was insolvent, and in order to be relieved of the deficiency judgment of approximately $79,000, filed a voluntary petition in bankruptcy in the District Court of the United States for the Eastern District of Michigan, Southern Division, on April 26, 1934, and was duly discharged in bankruptcy on July 28, 1934.

11 The sole asset of the syndicate was the property herein referred to, and the syndicate had no assets whatsoever left to distribute among its members.

The sole issue is agreed to be whether the loss in the sum of $4,998.03 is a loss resulting from the "sale or exchange" of the property, and, therefore, within the purview of section 117 (d) of the Revenue Act of 1934:

Limitation on Capital Losses.—Losses from sales or exchanges of capital assets shall be allowed only to the extent of $2,000 plus the gains from such sales or exchanges. * * *

or whether the loss is an ordinary loss allowable as a deduction in full under and within the purview of section 23 (e) (2) of the Revenue Act of 1934:

Losses by Individuals.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

* * * * * * *

(2) if incurred in any transaction entered into for profit; though not connected with the trade or business; * * *

Addressing ourselves to the issue before us, i. e., the interpretation of section 117 (d), our observation in John H. Watson, Jr.,

27 B. T. A. 463, is precisely pertinent. There we said, "The words 'sale or exchange' are ordinary words of well established meaning." It is fundamental that the language of the revenue act is to be taken in its ordinary meaning. Hale v. Helvering, 85 Fed. (2d) 819. Here there is nothing in the context to indicate an intention to give the words "sale or exchange" an exotic meaning.

Thus the problem becomes one of application. Under the above facts, was the loss sustained on a sale or exchange of property? Giving the words "sale or exchange" their ordinary meaning, we are of the opinion the loss did not arise from a transaction properly to be so characterized. Petitioner neither sold nor exchanged anything. She lost her property through the operation of the law of foreclosure. The sale by the sheriff effected a transfer of title to the property but it did not constitute a sale or exchange by taxpayer. The purchaser at the foreclosure sale got a sheriff's deed, not a deed from the petitioner.

12 Thus it is that we are unable to find any justification for respondent's holding that the loss arose from a sale or exchange.

On the other hand, we believe the loss is properly to be placed under section 23 (e) (2). This section is broad in scope. Petitioner entered into a transaction for profit when she bought the property. The transaction was closed and the loss sustained when the property was taken from her by foreclosure.

It follows that petitioner's loss is not to be limited by the provisions of section 117 (d).

Judgment will be entered for the petitioner.

[SEAL]

Before United States Board of Tax Appeals

Decision

Entered December 31, 1937

Pursuant to the determination of the Board, as set forth in its Memorandum Opinion, entered December 30, 1937, it is

Ordered and decided: That there is no deficiency in income tax for the year 1934.

[SEAL] (Signed) ERNEST H. VAN FOSSAN,
Member.

13 Before United States Board of Tax Appeals

Petition for review and assignments of error

Filed March 24, 1938

To the Honorable Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, James W. Morris, Assistant Attorney General,

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and Harold F. Noneman, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

That he is the duly appointed, qualified, and acting Commissioner of Internal Revenue, appointed and holding office by virtue of the laws of the United States; that Godfrey and Pearl Hammel are individuals and are husband and wife, residing together; that the respondents executed a joint Federal income-tax return for the calendar year 1934 and filed the same with the Collector of Internal Revenue for the District of Michigan, whose office is located at Detroit, Michigan, which is within the jurisdiction of this honorable court.

That the court in which the review of this proceeding is sought is the United States Circuit Court of Appeals for the Sixth Circuit.

II

The nature of the controversy is as follows, to wit:

During the years 1926 to 1930, both inclusive, the petitioner Pearl Hammel invested the sum of $4,998.03 in a speculative land syndicate, which syndicate purchased on land contract 80 acres of land in Oakland County, Michigan, known as "The Adams Farm," the purchase price being $96,000. The syndicate made a down payment of $20,000, and thereafter approximately $4,000 additional was paid on the principal, leaving an unpaid balance of approximately $72,000, plus accrued interest and State and County taxes for several years.

One Charles L. Bruce acted as Trustee for the purchasers (the syndicate members).

Because of the general financial condition of the country, the value of the land, and other lands in Oakland County, Michi-
14 gan, depreciated to the extent that the land referred to decreased in value to the value of farm land and was worth, in 1934, approximately $8,000.

The petitioner Pearl Hammel and other members of the syndicate were unable to meet the payments called for by the contract and were in default and the seller on the contract, Mrs. Julia Adams, commenced foreclosure proceedings in Chancery in the Oakland County Circuit Court and obtained a decree of foreclosure without any equity of redemption, which decree was affirmed by a decision of the Michigan Supreme Court and a decree entered thereon in the year 1934, pursuant to which decree the property was sold on March 26, 1934, by the sheriff and the sheriff's deed issued to Mrs. Julia Adams. Julia Adams, in the Supreme Court proceedings, obtained a deficiency judgment against all of the members of the syndicate, jointly and severally, in the amount of approximately $79,000. The petitioner, Pearl Hammel, was insolvent, and in order to be relieved

of the deficiency judgment of approximately $79,000, filed a voluntary petition in bankruptcy in the District Court of the United States for the Eastern District of Michigan, Southern Division, on April 26, 1934, and was duly discharged in bankruptcy on July 28, 1934.

The sole asset of the syndicate was the property herein referred to, and the syndicate had no assets whatsoever left to distribute among its members.

As a result the respondent, Pearl Hammel, sustained a loss of $4,998.03. The respondents filed a joint Federal income-tax return for the calendar year 1934 in which this amount was deducted in arriving at the taxable net income.

On May 13, 1936, the Commissioner mailed to the respondents aforesaid a notice of deficiency in Federal income tax for the calendar year in the amount of $426.79. In determining the deficiency in the tax the Commissioner limited the deduction in connection with the aforesaid loss to $2,000.00, pursuant to the provisions of Section 117 (d) of the Revenue Act of 1934 (48 Stat. 714, U. S. C. Title 26, Sec. 101), as a loss sustained from the sale or exchange of a capital asset.

On August 10, 1936, the respondents on review filed an appeal with the United States Board of Tax Appeals from the Commissioner's determination of the deficiency as set forth in the notice of deficiency aforesaid. After the answer of the Commissioner was duly
15 filed, the case was submitted to the Board of Tax Appeals for decision upon the pleadings and a stipulation of facts. The opinion and interlocutory decision of the Board of Tax Appeals was entered December 30, 1937, and the final order of the Board redetermining the deficiency was entered December 31, 1937, in which it was ordered and decided that there was no deficiency in income tax due from the respondents for the calendar year 1934.

III

The Commissioner of Internal Revenue, being aggrieved by the conclusions of law contained in the decision of the Board of Tax Appeals, and by its order redetermining the deficiency in the tax, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Sixth Circuit.

The Commissioner's assignments of error are as follows:

(1) The Board of Tax Appeals erred in that its decision is not supported by and is contrary to the evidence.

(2) The Board of Tax Appeals erred in holding and deciding that the petitioner, Pearl Hammel, sustained an ordinary loss upon the disposition of property instead of holding and deciding that she sustained a capital loss upon the sale or exchange of a capital asset.

(3) The Board of Tax Appeals erred in not holding and deciding that the petitioner, Pearl Hammel, sustained a capital loss upon the

sale or exchange of a capital asset, instead of holding and deciding that she sustained an ordinary loss upon the disposition of property.

(4) The Board of Tax Appeals erred in entering its final order of redetermination that there is no deficiency in the income tax of the petitioners for the year 1934 instead of a deficiency of $426.79, as determined by the Commissioner.

(5) The Board of Tax Appeals erred in failing and refusing to enter a final order of redetermination that there is due from the petitioners a deficiency in income tax for the year 1934 in the amount of $426.79, instead of no deficiency.

Wherefore, the Commissioner petitions that the decision of
16 the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Sixth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Signed) JAMES W. MORRIS,
Assistant Attorney General.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
HAROLD F. NONEMAN,
Special Attorney,
Bureau of Internal Revenue.

[*Duly sworn to by Harold F. Noneman; jurat omitted in printing.*]

17 Before United States Board of Tax Appeals

Notice of filing petition for review

Filed April 4, 1938

To GODFREY HAMMEL and PEARL HAMMEL,
1248 Free Press Building, Detroit, Michigan.

You are hereby notified that the Commissioner of Internal Revenue did, on the 24th day of March 1938 file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 24th day of March 1938.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 29th day of March 1938.

(Signed) GODFREY HAMMEL,
(Signed) PEARL HAMMEL,
Respondents on Review.

18 Before United States Board of Tax Appeals

Notice of filing petition for review

Filed April 4, 1938

To JOHN J. SLOAN, *Esq.*,
Dime Bank Building, Detroit, Michigan.

You are hereby notified that the Commissioner of Internal Revenue did, on the 24th day of March 1938 file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Sixth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 24th day of March 1938.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 30th day of March 1938.

(Signed) JOHN J. SLOAN,
Counsel for Respondents on Review.

19 Before United States Board of Tax Appeals

Stipulation of facts

Filed July 6, 1937

It is hereby stipulated by and between the parties to the above-entitled cause, through their respective counsel, as follows:

I

That during the years 1926 to 1930, both inclusive, the petitioner, Pearl Hammel, invested the sum of Four Thousand Nine Hundred Ninety-Eight and 03/100 Dollars ($4,998.03) in a speculative land syndicate, which syndicate purchased on land contract eighty (80) acres of land in Oakland County, Michigan, known as "The Adams Farm," the purchase price being Ninety-Six Thousand Dollars ($96,000.00).

II

That said syndicate made a down payment of Twenty Thousand Dollars ($20,000.00) and thereafter approximately Four Thousand Dollars ($4,000.00) additional was paid on the principal, leaving an unpaid balance of approximately Seventy-Two Thousand Dollars ($72,000.00), plus accrued interest and State and County taxes for several years.

III

That one Charles L. Bruce acted as Trustee for the Purchasers (the Syndicate members).

IV

That because of the general financial condition of the country, the value of said land, and other lands in Oakland County, Michigan, depreciated to the extent that the land referred to decreased in value to the value of farm land and was worth, in 1934, approximately Eight Thousand Dollars ($8,000.00).

V

That the petitioner, Pearl Hammel, and other members of the Syndicate, were unable to meet the payments called for by the contract and were in default, and the Seller on said contract, Mrs. Julia Adams, commenced foreclosure proceedings in Chancery in the Oakland County Circuit Court and obtained a decree of foreclosure without any equity of redemption, which decree was affirmed by a decision of the Michigan Supreme Court and a decree entered thereon in the year 1934, pursuant to which decree the property was sold on March 26, 1934, by the sheriff and the Sheriff's deed issued to the said Mrs. Julia Adams; that the said Julia Adams in said Supreme Court proceedings obtained a deficiency judgment against all of the members of the Syndicate, jointly and severally, in the amount of approximately Seventy-Nine Thousand Dollars ($79,000.00). The petitioner, Pearl Hammel, was insolvent, and in order to be relieved of said deficiency judgment of approximately Seventy-Nine Thousand Dollars ($79,000.00), filed a voluntary petition in bankruptcy in the District Court of the United States for the Eastern District of Michigan, Southern Division, on, to-wit: the 26th day of April, 1934, and was duly discharged in bankruptcy on, to-wit: July 28, 1934.

VI

That the sole asset of said Syndicate was the property herein referred to, and that said Syndicate had no assets whatsoever left to distribute among its members.

VII

It is further stipulated and agreed, the facts herein being agreed upon, so far as legally permissible for the parties to do, that the sole issue is whether the loss of the said Pearl Hammel in the sum of Four Thousand Nine Hundred Ninety-Eight and 03/100 Dollars ($4,998.03) is a loss resulting from the "sale or exchange" of said property, and therefore within the purview of Section 117–D of the Revenue Act of 1934, or whether said loss is an ordinary loss allowable as a deduction in full under and within the purview of Section 23–E2 of the Revenue Act of 1934.

(Signed) JOHN J. SLOAN,
Attorney for Petitioners.
(Signed) MORRISON SHAFROTH,
Attorney for Respondent.

JOHN J. SLOAN,
Attorney for Petitioners,
1020 Dime Bank Building, Detroit, Michigan.

Dated: June —, 1937.

21 Before United States Board of Tax Appeals

Praecipe for record

Filed June 10, 1938

To the CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Sixth Circuit, heretofore filed by the Commissioner of Internal Revenue.

1. Docket entries of the proceedings before the Board.
2. The following pleadings before the Board:
(a) Petition, including the copy of the notice of deficiency annexed thereto as "Exhibit A."
(b) Answer.
3. Opinion and decision of the Board.
4. Petition for review, together with proof of service of notices of filing petition for review and of service of copies of petition for review.
5. Stipulation of facts filed by the parties at the hearing on July 6, 1937.
6. This praecipe.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 7th day of June 1938.

(Signed) JOHN J. SLOAN,
Attorney for Respondents.

22 [Clerk's certificate to foregoing transcript omitted in printing.]

Before United States Board of Tax Appeals

Order enlarging time

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above-entitled proceeding in the United States Circuit Court of Appeals for the Sixth Circuit, be and it is hereby extended to June 22, 1938.

(S) C. R. ARUNDELL, *Member.*

Dated Washington, D. C., May 17, 1938.

Now, June 18, 1937, the foregoing order enlarging time certified from the record as a true copy.

[SEAL]

B. D. GAMBLE, *Clerk,*
U. S. Board of Tax Appeals.

23 In United States Circuit Court of Appeals for the Sixth Circuit

Minute entry of argument and submission

December 13, 1939

Before HICKS, HAMILTON, and ARANT, JJ.

This cause is argued by A. A. Armstrong for Petitioner and by John J. Sloan for Respondents and is submitted to the court.

In United States Circuit Court of Appeals

Decree

Entered January 10, 1940

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order or decree of the said Board of Tax Appeals in this cause be and the same is hereby affirmed.

24 [File endorsement omitted.]

In United States Circuit Court of Appeals, Sixth Circuit

No. 8043

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

GODFREY HAMMEL and PEARL HAMMEL, RESPONDENTS

On petition for Review of Decision of the United States Board of Tax Appeals

Opinion

Filed January 10, 1940

Before HICKS, HAMILTON, and ARANT, Circuit Judges.

HAMILTON, Circuit Judge. This is a petition by the Commissioner of Internal Revenue to review a decision of the Board of Tax Appeals disallowing a deficiency in income taxes of $426.00 for the calendar year 1934, found by him to be due from the respondents, but disallowed by the Board.

The statutes involved are Sections 23 (e) (2) (Title 26 U. S. C. A., Sec. 23), Section 111 (a) Title 26 (U. S. C. A., Sec. 111), Section 117 (a) (b) (d) (Title 26 U. S. C. A., Sec. 101).

During the years 1926 to 1930, both inclusive, the respondents, Godfrey Hammel and Pearl Hammel, husband and wife, paid $4,998.03 into a syndicate of which they were members on a land contract which it had purchased, consisting of 80 acres of land in Oakland County, Michigan. The purchase price was $96,000.00 and the syndicate paid $20,000.00 at the time of pu'chase and thereafter approximately $4,000.00, leaving unpaid $72,000.00 together with accrued interest and delinquent state and county taxes.

In 1934, the property, being worth no more than approximately $8,000.00 and the syndicate having defaulted in payments, the
25 vendor, Julia Adams, commenced foreclosure proceedings in the Oakland County Circuit Court and obtained a foreclosure decree without equity of redemption which on appeal the Michigan Supreme Court affirmed and on March 26, 1934, the Sheriff, pursuant to said decree, sold the property at public auction which resulted in a deficiency judgment of approximately $79,000.00 against the syndicate members jointly and severally.

On April 26, 1934, the respondent, Pearl Hammel, was adjudged a bankrupt and discharged July 28, 1934. The land was the sole asset of the syndicate and none of its members received any sum in distribution. The respondents lost the entire $4,998.03, which they had paid in and filed a joint income tax return for the calendar year 1934, deducting this sum as a loss. The petitioner on audit and

review reduced the loss to $2,000.00 pursuant to the provisions of Section 117 (d) of the Revenue Act of 1934 (48 Stat. 714, U. S. C. A. 26, Sec. 101).

Respondents appealed to the Board of Tax Appeals from the deficiency, which decided that the entire loss was deductible under the provisions of Section 23 (e) (2) of the Revenue Act of 1934 (48 Stat. 680, U. S. C. A. 26, Sec. 23), hence this appeal.

The Revenue Act of 1934 (c. 227, 48 Stat. 680) provides that in computing the taxable net income of an individual for the taxable year there may be deducted from gross income losses sustained during the year from any transaction entered into for profit [Sec. 23 (e) (2)]. The deductible loss from the "sale" or other disposition of property is determined by subtracting the amount realized from the cost basis, less depreciation, plus capital expenditures, etc. [Sec. 111 (a)] but if the loss results from the "sale or exchange" of a "capital asset" [Sec. 117 (b)] only a specified percentage of the loss realized may be deducted in determining net income [Sec. 117 (a)] and the total deduction may not exceed $2,000.00 plus gains from sales or exchanges of capital assets [Sec. 117 (d)].

In the case at bar the parties have stipulated that respondents lost $4,998.03 during the taxable year and it is conceded that this loss is deductible unless limited to $2,000.00 under Section 117 (d). It is also conceded that the interest involved was a capital asset and the loss determinable at the time of the foreclosure sale. The question thus narrows itself to the simple one as to whether a foreclosure by a vendor is a sale, as that word is used in the Revenue Act.

It is unquestionably within the competence of the Congress
26 when imposing a tax to modify or abrogate for the purpose of the Act any rule of law or equity which otherwise would be applicable to the subject matter. Whether it has done so or not must always be a question of the true construction of the particular statute under consideration and the only method of interpretation is to ascertain the intention of the Congress from the language and provisions of the Act itself, and it is presumed that the words used therein are to be given their known and ordinary signification. Their popular import furnishes the general rule for interpretation and their plain, obvious, and rational meaning is always preferred to any curious, narrow, or hidden sense. Old Colony Railroad Company v. Commissioner, 284 U. S. 552, 560.

Under the laws of Michigan, when a vendee defaults on a land contract containing the usual forfeiture clause, the vendor may treat it as continuing in force and sue at law for payments due or bring suit in equity for a foreclosure of his lien or he may declare the contract forfeited. On a declaration of forfeiture, the contract is ended and the vendor is relieved of the duty to convey and the vendee of the duty to pay. On an equitable foreclosure, the vendor may obtain a deficiency judgment. Chicago Boulevard Land Company v. Apartment Garages, 245 Mich. 448; Bernard v. Huff, 252 Mich. 258.

It follows that the vendor here in question had the right to deprive the respondents and their joint adventurers of all interest in the property by a declaration of forfeiture and the only additional advantage of foreclosure was to obtain a deficiency judgment.

"Sale" is a word of precise legal import. Its elements are (1) parties competent to contract, (2) mutual consent, (3) a thing the absolute or general property in which is transferred from the seller to the buyer, (4) a price in money paid or promised. Butler v. Thomson, 92 U. S. 412, 414; Williamson v. Berry, 49 U. S. 495, 544. There is nothing in the legislative history of the statute in question or in the language of the act indicating that the Congress used the word "sale" in any sense other than its precise legal import or plain and obvious meaning.

If any one of the above elements be absent, it is not a sale as that word is understood in its ordinary signification.

The respondents in the case at bar were not parties to the sheriff's sale and neither contracted for nor consented to it and received no part of the consideration. They were deprived of their interest in the property not by sale but by an adverse judicial proceeding which completely extinguished their title without consideration.

27 The foreclosure was the identifiable event which established their loss. However, it was not established by a sale as that word is used in Section 117 of the Revenue Act of 1934. Commissioner of Internal Revenue v. Triehofer, 102 F. (2d) 787 (C. C. A. 3); Burnet v. Harmel, 287 U. S. 103, 107; Hale v. Helvering, 85 F. (2d) 819 (C. C. A. D. C.).

The order of the Board is affirmed.

28 [Clerk's certificate to foregoing transcript omitted in printing.]

29 Supreme Court of the United States

Order allowing certiorari

Filed May 20, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 44302. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 49. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. Godfrey Hammel and Pearl Hammel. Petition for a writ of certiorari and exhibit thereto. [Filed April 10, 1940. Term No. 49 O. T. 1940.]

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